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Supreme Court, U.S.
FILED
OCT 21 1992
OFFICE OF THE CLERK

No. 92-391

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

AMPRO FISHERIES, INC.,

Petitioners,

v.

JUDITH YASKIN, Commissioner of Environmental Protection; GEORGE HOWARD, Director, Division of Fish, Game and Wildlife; and BRUCE FREEMAN, Administrator, Marine Fisheries Administration,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

REPLY BRIEF AND SUPPLEMENTAL APPENDIX

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REPLY

Ampro Fisheries, Inc. ("Ampro") in its Petition for a Writ of Certiorari to the Supreme Court of New Jersey sought only to lay out the scope of the issues for which it was seeking review, and was not addressing the merits of the case. Ampro, however, wishes to set the record

straight on several misleading statements contained in the State of New Jersey's Brief in Opposition.

First, the State of New Jersey contends that the 1905 Bi-State Compact between New Jersey and Delaware, which requires both states to jointly regulate the Delaware Bay fishery, is a nullity because a "condition precedent" was never met. Specifically, New Jersey alleges that as a "condition precedent" to the Compact having any validity, both New Jersey and Delaware were required to enact the draft uniform laws proposed by the joint commissioners and that while New Jersey enacted such laws, Delaware did not. (Brief in Opposition - p. 17).

While Ampro disagrees that there is any such condition precedent, on the factual issue, New Jersey is incorrect. Both New Jersey (L.1907, c. 131, p. 302) and Delaware (24 Del. Laws, Chapter 146, 1907) enacted the proposed uniform laws in 1907. (A-1a, and 11a respectively.) The uniform laws enacted by both states permitted menhaden purse seiners access to the fisheries in the Delaware Bay. (Delaware, A-18a, Section 20 and New Jersey, A-7a, provision 19). Thus, New Jersey is wrong in its contention that a "condition precedent" was never met where New Jersey and Delaware did, in fact, enact the uniform laws in 1907.

Although both states initially complied with the terms of the Compact by conferring and adopting identical laws, both states thereafter disregarded the Compact and, to the continuing confusion of the fishermen, unilaterally adopted laws in violation thereof.[1]

Moreover, the entire concept of a "condition precedent" is specious and an attempt to mask the true issue. The real focus is whether a state, party to a Bi-State

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1. A specific example is *The Delaware Waterman's Association, Inc., et al. v. Edwin H. Clark, II, et al.,* Civil Action No. 92-318-SLR, (opinion dated June 19, 1992, by Hon. Sue L. Robinson) (A-25) in which New Jersey and Delaware fishermen sued both states, seeking to compel uniformity in accordance with the Compact, as recommended by the Bi-State Commission.

Compact that has been ratified by Congress and has been approved by this Court in settlement of litigation between two states, has the power to unilaterally abandon that Compact, which required concurrent and identical lawmaking, by unilaterally adopting laws in violation thereof.

Second, New Jersey suggests that the Atlantic States Marine Fisheries Commission (the "Atlantic Fisheries Commission") "should be empowered" to resolve any undue interference by one of the states with the common resource. (Brief in Opposition, pp. 9-10.) While Ampro whole-heartedly agrees with New Jersey's suggestion that the Atlantic Fisheries Commission "should be empowered" to resolve problems created by undue interference by one of the states with the common resource, the fact of the matter is, it does not possess such power. Consequently, review of the self-serving activities of the individual states can only be had through the judicial process in this Court.

Third, in its Brief in Opposition, New Jersey contends that because Ampro does not compete against the bait industry in the marketplace it is not disadvantaged in relation to in-state interests and, therefore, there can be no violation of the Commerce Clause. (Brief in Opposition pp. 4, 13). New Jersey's contention is merely an attempt to shift the focus of the essential issue. It is irrelevant whether Ampro competes against the bait industry in the marketplace, Ampro competes against the bait industry for the menhaden catch.

Where the regulation at issue operates to increase access to the menhaden catch for the in-state citizens (the bait industry), but restricts such access to the menhaden catch for out-of-state citizens (the reduction industry), such regulations are discriminatory and if unable to withstand the "strict scrutiny" test must be struck down as violative of the Commerce Clause.

Fourth, New Jersey asserts that preventing a "spacial conflict" was not the sole motive for adopting

the regulations at issue and that there were other legitimate state interests furthered, such as: enhancement of the breeding grounds for fish which feed on menhaden, conserving the menhaden fish by protecting the juvenile menhaden which are found closer to shore, and increasing the availability of menhaden as lobster and crab bait. (Brief in Opposition, pp. 2, 12-15, 22). While these interests were articulated by the State, a review of the record upon consideration of the merits will reveal no actual evidence of such interests. A review of the State's comments on adoption of the regulations reveals: 1) that commercial menhaden fishing is a clean fishery and does not harvest a significant number of fish such as stripped bass, weak fish and blue fish; 2) that while certain fish do feed on the menhaden as the schools migrate past New Jersey's shore, the taking of menhaden does not disrupt the feeding or reproduction of those fish; and 3) that the menhaden stock condition is stable and does not need conservation measures to protect it from over-fishing.

The fact that the state did not place any limits on the number of bait licenses that could be issued, nor did it place any limits on the quantity of menhaden catch that could be taken by the bait industry, further illustrates that the conservation of the menhaden was not a serious motive.

The record is replete with discriminatory intention by the State in adopting the regulations to protect the State's own recreational fishermen. The Supreme Court of New Jersey chose to disregard such discriminatory motives. 13A-14A. While the state may give lip service to legitimate state interests in adopting the regulations at issue, the record will reveal that there is simply no scientific basis to support the regulations nor any motive for adopting the regulations other than to prevent "spacial conflict" between menhaden purse seine fishermen and New Jersey's own recreational fishermen.

For the reasons set forth in the Petition for a Writ of Certiorari to the Supreme Court of New Jersey, this writ should issue.

Respectfully Submitted,

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SUPPLEMENTAL APPENDIX

CHAPTER 131.

An Act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of Delaware and the State of New Jersey.

WHEREAS, By virtue of article four of the compact or agreement entitled "A compact between the State of New Jersey and the State of Delaware, relating to the boundary controversy between said States," which was ratified and confirmed by an act of the Legislature of the State of New Jersey, approved March twenty-first, one thousand nine hundred and five, and by an act of the General Assembly of the State of Delaware, approved March twentieth, one thousand nine hundred and five, the State of New Jersey, by an act of the Legislature thereof, approved May eleventh, one thousand nine hundred and five, appointed William J. Bradley, James Strimple and John Boyd Avis commissioners on the part of the State of New Jersey to confer with like commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement; and

WHEREAS, By a similar act of the General Assembly of the State of Delaware, approved March twenty-third, one thousand nine hundred and five, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like commissioners on the part of the State of Delaware, to confer with the said commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, Each of the said commissions have been duly organized as provided and required by law; and

WHEREAS, The said commissioners of the said respective States, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware river and bay between

the said States, and have also ascertained the dividing line between the said Delaware river and Delaware bay, and have upon each of the shores of the said two States, where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware river and bay lying between the States of Delaware and New Jersey.

2. The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low-water marks on each side of said river between said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

3. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said compact beweeen the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either of said States.

4. Hereafter it shall be lawful for any person to catch and take from the waters aforesaid fish of any character (except shell-fish) with any net, hook and line, or other appliances; *provided,* the meshes of any net shall not be less than two and one-half inches long, stretched measure, and except as hereinafter provided; *provided further,* that nothing in this section shall apply to nets used for catching eels.

5. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character the meshes of which shall be less than five and one-quarter inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

6. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid any carp weighing less than one pound; and should any such fish be caught it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp, in any manner whatever, between the first day of May and the tenth day of August of each and every year.

7. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rockfish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half

inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rockfish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rockfish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish, weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters, uninjured.

8. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught, it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

9. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weakfish with a net of any character, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any trout or weakfish from the waters aforesaid, with a net of any character, between the hours

of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

10. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

11. Hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

12. Hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust, tan bark, coculus indicus (otherwise known as fish-berries), lime, refuse from gashouses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

13. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath day, commonly called Sunday.

14. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of

any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except catfish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wingdams, or any other device, excepting in the manner and with the means in this act provided; *provided,* that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets, or cast nets.

15. Hereafter it shall be unlawful for any person to sell, expose for sale or have in possession, any fish caught and taken in violation of the provisions of this act.

16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or work-house for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the State, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county, or

any fish and game warden of the State, to at once seize the same wheresoever it may be found, who shall thereupon advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days' notice by advertisements, posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

18. Any justice of the peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of this act, issue his warrant to the sheriff or any constable of the county or any fish and game warden of the State, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this act. The said sheriff, constable, officer or fish and game warden, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

19. It shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware river or Delaware bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; *provided, however,* that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the

crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of the State, upon the payment to it annually of the sum of one hundred dollars ($100) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware bay as far north as a straight line drawn from the center of the mouth of Mahon's river to the nearest point opposite on the New Jersey shore, from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State for the use of said commission as provided by law.

20. It shall be unlawful for any person to have in his possession or to bring into this State any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware bay or river within the bounds aforesaid, for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

21. Any fish commissioner, fish and game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

22. Each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this act committed or attempted to be committed by any person who is not an inhabitant of either of said States.

23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of

Delaware or the State of New Jersey for any violation of this act; *provided, however,* that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time shall, when and as requested by the Governor of this State, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act; *provided, however,* that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this act.

24. The provisions of this act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the provisions of an act

entitled "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March twenty-ninth, one thousand eight hundred and ninety-seven, and the supplements thereto and acts amendatory thereof.

25. This act shall take effect immediately, but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of this act. The provisions in this act contained regulating the size of the meshes of fishing nets shall not become operative until October first, one thousand nine hundred and eight.

26. All laws, or parts of laws, inconsistent with the provisions of this act, be and the same are hereby repealed.

Approved May 7, 1907.

CHAPTER 146.

OF FISH, OYSTERS AND GAME

AN ACT Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey.

Whereas, By virtue of Article IV of the compact or agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States," which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

Whereas, By a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

Whereas, Each of the said Commissions have been duly organized as provided and required by law; and

Whereas, The said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have upon each of the shores of the

said two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section I. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the water of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the State of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided; provided further, that nothing in this Section shall apply to nets used for catching eels.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net

of any character, the meshes of which shall be less than five and one-quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid, with a seine or net of any kind, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever

between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds, and should any such fish weighing over twenty pounds be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take or to attempt to catch and take, fish of any kind with a net of any character which

is anchored, staked or fastened down in any way across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage, or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil sawdust, tan bark, coculusindicus (otherwise known as fish berries), lime refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel, weir, fyke net, pound net, shore net, dip net,

cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, tyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten

public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the State. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars ($5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars ($2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds

thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises, and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of October, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Section 23. That all prosecutions from the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

Section 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

Section 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

The provisions in this Act contained regulating the size of the meshes of fishing nets shall not become operative until October 1, 1908.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

Approved April 23, A. D. 1907.